



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

Arkil Lionkingzulu
Plaintiff

9:20-w-312

Complaint

v.

Jury Trial Demanded

Christopher D. Wells, et al.,
Defendants

Complaint with Jury Demand
Introduction

This is a civil rights action filed by Arkil Lionkingzulu a state prisoner, for damages and compensatory as well as punitive damages under 42 U.S.C. § 1983, alleging excessive use of force and denial of medical care in violation of the Eighth Amendment to the United States Constitution. The plaintiff also alleges the torts of assault and battery and negligence.

Jurisdiction

- 1) The court has jurisdiction over the plaintiff's claims of violation of Federal constitutional rights under 42 U.S.C. §§ 1331 (1) and 1343.

Parties

- 2) Plaintiff, Arkil Lionkingzulu, is a state prisoner and was incarcerated at Clinton Correctional Facility (Clinton) during the events described in this complaint.

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3) Defendants Wells, Temer, Denny, McKeary, Bushey, are correctional officers employed at Clinton. They are sued in their individual capacities.

4) Defendant Mason is a correctional sergeant employed at Clinton. He is sued in his individual capacity as well, as his supervisory capacity.

5) Defendant J. Leporte is a RN at Clinton and is generally responsible for ensuring provision of medical care to prisoners, when a prisoner needs specialized treatment or evaluation. She is sued in her individual capacity.

6) All the defendants have acted, and continue to act, under color of state law at all times relevant to this complaint.

Facts

7) On the date of May 8, 2017, while being housed in 10 gellery upper-F 37 cell, Plaintiff was scheduled for commissary. Upon return from the morning chow run, Plaintiff asked 10 gellery officer Defendants Megoon was plaintiff on the commissary list, because plaintiff had turned in his commissary sheet on Friday the date May 5, 2017, as required by rule. Prison guard Megoon immediately responded "no". At this time, plaintiff made the same inquiry to Defendant Wells, while he was making his rounds on 10 gellery upper-F block. Prison guard Wells responded in a very hostile tone, "you're not going to commissary."

8) Plaintiff commence to write a formal complaint to the superintendent, when several names as well as plaintiff's name was called over the loud-speaker to get ready for commissary.

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9) Plaintiff's cell gate had open under false pretenses that plaintiff thought he was going to commissary.

10) Plaintiff stepped off ten gallery, upper-F block, when plaintiff was approach by defendant Wells and asked "what do you have in your mouth?" Plaintiff replied "nothing." Defendant Wells said "I seen you put some-thing in your mouth, what do you have in your mouth?" Plaintiff, then opened his mouth to show defendant Wells, that plaintiff didn't possess any-thing with-in his mouth.

11) Plaintiff was then directed to place his hands on the wall, plaintiff commence to walk over to (9) gallery and place his hands on the wall. Defendant Wells said "No place your hands right here." which was the wall in the center of the walkway between (9) and (10) gallery, while plaintiff was complying with the order to place his hands on the wall, plaintiff observed defendant Turner, walking up the stairs adjusting his blue gloves.

Misuse of Force

12) Defendant Turner, was standing on the left side behind plaintiff defendant megon was on the right side, and defendant Wells, was standing center behind plaintiff. Defendant Wells, commence to get Frisk plaintiff in a harsh manner. Defendant Turner, at that time threw his arm around plaintiff's neck, tripping plaintiff to the floor. Defendant Wells, while plaintiff was laying on the floor in a position of weakness struck plaintiff twice in the face.

13) Plaintiff commence to yell-out "what are your doing get the sergeant." Defendant megon struck plaintiff twice in the face while defendant Turner was on top of plaintiff screaming "stop resisting - I am going to spray you. That's when defendant Turner struck plaintiff in the face and pulled the alarm. Plaintiff

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was still laying on the floor in a position of weakness.

14) Defendant wells had his knee on plaintiff's back bending plaintiff's left arm. Defendant magoon was twisting plaintiff's right foot when plaintiff was slightly turned over to his right side by defendant wells, who still had plaintiff's left arm bent. Defendant magoon was still twisting plaintiff's right foot.

15) At this moment defendant Kellen broke through a crowd of officers, bent down and struck plaintiff six times in the rib area. Defendant McCleery stomped on plaintiff's head three times, while plaintiff's right side of his face was pinned down. Plaintiff was suddenly lift up from the floor by defendant wells, and prison guard magoon, who had plaintiff's arms behind his back.

16) Plaintiff seen two sergeants defendant mason, and sergeant David Duquette. Plaintiff address the two sergeants who was present while the mistreatment was taking place, "you are going to stand there and let them do that." Defendant mason smiled at plaintiff before striking plaintiff three times in the rib area.

17) sergeant Bryen D. mason defendant was still smiling when he told plaintiff "Fuck you niga and die" while plaintiff was being escorted to the hospital by defendant Bushey and sergeant Duquette. Plaintiff was requesting a wheel-chair because plaintiff's breathing had become laborious.

18) Defendant Bushey struck plaintiff four times in the rib area saying "maybe that will help you breathe better you fucking niga."

Denial of medical care

19) while plaintiff was in (Clinton) infirmary on the date of May 8th 2017,

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defendant RN J. Laporte asked plaintiff, if he wanted to make a statement, plaintiff told defendant RN J. Laporte, "I can't breathe, I think my ribs are broken."

20) Defendant RN Laporte told plaintiff "There is nothing wrong with you, as far as I can see, you are alright."

21) on May 12th 2017, plaintiff spoke to a Dr. Vonda Johnson, who told plaintiff that he had three fractures.

22) on May 16th 2017 Dr. Vonda Johnson, sent plaintiff a memorandum stating that plaintiff's 8th, 9th, 10th, and 11th ribs on the left side has been fractured. Dr. Vonda Johnson asked Clinton Dr. Adams to refer plaintiff, to a cardio specialist due to the fluid on the left bottom lung.

23) on June 6th 2017, plaintiff went on an outside trip to Adirondack hospital. The examining doctor who was scrutinizing plaintiff's X-rays, told plaintiff, that he had a punctured rib and the lung had collapsed and risen.

24) Defendant RN Laporte is responsible for medical care generally and for referring for specialized medical care outside the prison.

25) As a result of this incident, plaintiff suffered severe physical and mental pain and anguish. The mistreatment was unjustified or without provocation and that it was done intentionally and willfully.

Exhaustion of Administrative Remedies

26) Plaintiff filed a grievance complaining about the use of excessive force by defendants Wells, Tamer, Denny, McCleery, Bushey, Mason, and completed all three steps of the grievance

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Process.

claims for Relief

27) The actions of defendant(s) Wells, Temer, Denny, McCleery, Bushey, and mason in using physical force against the plaintiff without need or provocation, or in failing to intervene to prevent the misuse of force, were done maliciously and sadistically and constituted cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution.

28) The actions of defendants Wells, Temer, Denny, McCleery, Bushey and mason, in using physical force against the plaintiff without need or provocation constituted the tort of assault and battery under the laws of New York State.

29) The failure of defendant mason to take disciplinary or other action to curb the known pattern of physical abuse of convicts by defendant(s) Wells, Temer, Denny, McCleery and Bushey constituted deliberate indifference to the plaintiffs and other prisoners' safety, and contributed to and proximately caused the above-described violation of Eighth Amendment rights and assault and battery.

Relief Requested

WHEREFORE, plaintiff requests that the court grant the following relief:

A. Issue a declaratory judgment stating that:

1. The physical abuse of the plaintiff by defendant(s) Wells, Temer, Denny, McCleery, Bushey, mason violated the plaintiffs rights under

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the Eighth Amendment to the United States Constitution and constituted an assault and battery under state law.

2) Defendant RN Leporte's actions in failing to provide adequate medical care for the plaintiff violated, and continue to violate, the plaintiff's rights under the Eighth Amendment to the United States Constitution.

B. Award compensatory damages in the following amounts:

1. \$ 25,000,000.00 jointly and severally against defendants Wells, Tamer, Denny, McCleery, Bushey, and Mason for the physical and emotional injuries sustained as a result of the plaintiff's mistreatment.

2. \$ 100,000 jointly and severally against defendant RN Leporte for the physical and emotional injury resulting from her failure to provide adequate medical care to the plaintiff.

C. Award punitive damages in the following amounts:

1. \$ 55,000 each against defendant(s) Wells, Tamer, Denny, McCleery, Bushey, and Mason.

2. \$ 25,000 against RN Leporte.

D. costs and disbursements.

E. Grant such other relief as it may appear that plaintiff is entitled.

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Date: 3/16/2020

Respectfully submitted

Artel Lionkingzulu 96A-4462

Artel Lionkingzulu, 96A-4462

Elmira Correctional Facility

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